NEW YORK STATE OF OPPORTUNITY. Department of Health

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Executive Deputy Commissioner

June 29th, 2021

Ms. Andrea Inman
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
110 State Street, 11th Floor
Albany New York, 12236

Dear Ms. Inman:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2018-S-71 entitled, "Medicaid Program: Improper Medicaid Payments for Individuals Receiving Hospice Services Covered by Medicare."

Please feel free to contact Michelle Newman, Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Theresa Egan
Deputy Commissioner for Administration

Enclosure

cc: Ms. Newman

Department of Health Comments on the Office of the State Comptroller's Final Audit Report 2018-S-71 entitled, "Medicaid Program: Improper Medicaid Payments for Individuals Receiving Hospice Services Covered by Medicare"

The following are the responses from the New York State Department of Health (Department) to Final Audit Report 2018-S-71 entitled, "Medicaid Program: Improper Medicaid Payments for Individuals Receiving Hospice Services Covered by Medicare" by the Office of the State Comptroller (OSC).

Recommendation #1:

Review the $5.9 million ($4.3 million + $1.1 million + $370,506 + $74,693) in actual and potential overpayments and ensure proper recoveries are made.

Response #1:

To date, the Office of the Medicaid Inspector General (OMIG) has recovered more than $80,000 of the OSC-identified overpayments. OMIG has audit protocols, which address the findings in the OSC final audit report, including but not limited to overlapping services, services that should have been covered by hospice providers, and unnecessary personal care services. OMIG performed its own extraction of data from the Medicaid Data Warehouse, which may include those OSC-identified overpayments not already adjusted or recovered, to ensure the data used by OSC is complete and to confirm the accuracy of the claims detail for use in OMIG audit activities, and has initiated the audit process of pursuing OSC-identified overpayments determined to be inappropriate. Pursuant to State regulations, any identified overpayments OMIG pursues for recovery are subject to the provider's right to due process.

Recommendation #2:

Design and implement a process to identify and track all Medicaid recipients who elect Medicare-covered hospice care (coordinate with CMS, as appropriate).

Response #2:

The Department has initiated a system change, eMedNY Evolution Project 6948. The project goals are to display the hospice indicator and where available, the hospice provider via eMedNY/ePACES client search. The system change request incorporates the data the Department receives from CMS. This Medicare hospice election information will be displayed using the Recipient Restriction/Exception (RRE) code when the client's information is retrieved on eMedNY or the ePACES Provider Eligibility Response tool.

In addition, the project will create a RRE code for Medicaid hospice clients that the Local Departments of Social Services (LDSS) staff will use when hospice election is reported to the LDSS.

The Department, in conjunction with the Office of Primary Care and Health Systems Management (OPCHSM), is establishing a roster of hospice care recipients and ongoing reporting of Medicaid hospice clients.

Recommendation #3:

Establish controls to prevent Medicaid fee-for-service (FFS) and managed care payments for services that should be covered by Medicare hospice, particularly for the types of services identified in this audit.

Response #3:

To address this recommendation, a two-part approach is required and is currently being implemented. First, with the implementation of eMedNY Evolution Project 6948, the Department can identify the associated hospice provider with the hospice recipient to improve coordination of care and add controls to the eMedNY's claim system in order to prevent improper FFS payments billed by non-hospice providers. Second, the Department is clarifying which services should be covered by hospice and issuing comprehensive guidance to hospice providers via a *Medicaid Update* (the Department's official publication for Medicaid providers) and updates to the Hospice Billing and Program Policy Guidelines.

Recommendation #4:

Formally remind Managed Long Term Care (MLTC) plans and LDSS (for recipients not enrolled in MLTC plans) to coordinate services and financial obligations with hospice providers, particularly for personal care and durable medical equipment (DME) and supplies.

Response #4:

The Department is issuing an MLTC policy and General Information System message to remind MLTC plans and LDSS to coordinate services and financial obligations with hospice providers, particularly for personal care services and DME and supplies.

The Department, in conjunction with OPCHSM, is adapting the hospice disclosure form for non-covered services so it can be shared with MLTC plans and LDSS at the time hospice is elected. MLTC plans and LDSS will be directed to review and add to this form any unlisted service(s), along with their primary diagnosis, that they will continue to provide. This form will assist in developing a plan of care.

Recommendation #5:

Formally remind hospice providers of their role in coordinating services unrelated to recipients' terminal illnesses with Medicaid providers and Managed Care Organizations (MCOs), particularly personal care and DME and supplies.

Response #5:

OPCHSM is drafting a "Dear Administrator Letter" (DAL) to issue to all hospice providers reminding them of the Medicare Conditions of Participation requirement to coordinate all services provided to individuals electing the hospice benefit. The DAL is a companion to the Department's directive for MLTC plans and LDSS' in response to Recommendation #4.

Recommendation #6:

Monitor MLTC plans and LDSS to ensure they maintain adequate documentation of hospice recipients' conditions and services that are unrelated to the terminal illness that should be covered by Medicaid when approving services (such as personal care services and DME and supplies).

Response #6:

The Department is working with the MLTC plans to ensure that they comply with Article V.J.9.c.ix of the Managed Long-Term Care Partial Capitation Contract where it states:

> *Enrollees who have been served by the Contractor and who subsequently elect hospice as a result of a qualifying illness or condition may continue to be enrolled in the MLTCP. Upon hospice enrollment, the Contractor must reevaluate its Person Centered Service Plan in consultation with the hospice in order to coordinate Person Centered Service Plans and avoid duplication or conflict.*

The Department is also working with the MLTC plans to ensure that Person Center Service Plans accurately document what is covered by the MLTC as opposed to hospice and is expanding its survey process to include a sample review of said documentation. Specifically, the Department requests lists of MLTC plans' hospice electees, and a sample is pulled for the Department's enrollee records review to ensure that Person Center Service Plans accurately document what is covered by the MLTC versus hospice services. Upon the completion of the review, recommendations are made to the plan on compliance.

The Department will monitor the LDSS to ensure they maintain adequate documentation of hospice recipients' conditions and services unrelated to the terminal illness, e.g., personal care services or consumer directed personal care services.

Recommendation #7:

Consider requiring non-hospice service providers to document the reason a service is provided outside of the hospice benefit (e.g., diagnoses or conditions) and, accordingly, not related to a recipient's terminal illness.

Response #7:

The Department is issuing a *Medicaid Update* instructing non-hospice providers to document the reason a service is provided outside of the hospice benefit.

Recommendation #8:

Assess the appropriateness of requiring Medicaid MCOs to pay 95 percent of the nursing home room and board rate for dual-eligibles enrolled in hospice and, if warranted, take steps to implement any changes.

Response #8:

The Department already evaluates the viability of having Medicaid MCOs pay 95 percent of the nursing home rate for room and board and will continue to do so.

Recommendation #9:

Update relevant Medicaid policies to coincide with new billing, payment, and policy changes made in response to this audit.

Response #9:

The Department is reviewing and updating guidance and policies, as needed, including:

- New York State UB04 Billing Guidelines dated 6/1/2011; and
- New York State Medicaid Program Hospice Program Policy Guidelines dated 3/1/2008.